

REMARKS

Claims 1-76 are pending. Claims 1-11 and 13-64 are withdrawn from consideration, and claims 65-70 are canceled. Claim 12 is amended. Claim 77 has been added. Markings of the claims show changes as compared to the version of the claims filed on the Response to Final Office Action on March 25, 2008.

Telephonic Interview

Applicant thanks the Examiner for her time and courtesy during the telephonic interview on November 20, 2008 regarding language that was supported by the specification. This language was set forth in the interview summary mailed on December 4, 2008. The claims have been amended as set forth above in accordance with that interview.

Withdrawal of Objection to the Specification

Applicant thanks the Examiner for withdrawal of the objections to the specification in the Final Office Action.

Withdrawal of Rejections under 35 U.S.C. §112, Second Paragraph

Applicant thanks the Examiner for withdrawal of the rejection of claim 12 under 35 U.S.C. §112, second paragraph for indefiniteness in the Final Office Action.

Withdrawal of Rejections Under 35 U.S.C. §102

Applicant thanks the Examiner for acknowledging the priority document, perfection of the priority claim in the instant case, and withdrawal of the rejections for anticipation in the Final Office Action.

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Withdrawal of Rejections of Claim 12 Under 35 U.S.C. §103

Applicants thank the Examiner for the withdrawal of the rejection of claims for obviousness in the Final Office Action. Applicant submits that the claims as amended remain non-obvious in view of the cited art.

Rejections under 35 U.S.C. §112, Second Paragraph

The Examiner has rejected claims 73 and 75 under 35 U.S.C. §112, ¶2 as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention.

The term “said cancer cells” in line 5 of claim 73 is stated to lack sufficient antecedent basis for the limitation. Applicant thanks the Examiner for the careful reading of the claim. Line 3 of the claim was amended in response to the Final Office Action and now reads as set forth above to recite “culturing cancer cells” to provide proper antecedent basis for “said cancer cells” in line 5. Withdrawal of the rejection is respectfully requested.

Claim 75 is rejected for not further limiting the subject matter of the claim from which it depends. Claim 75 is now dependent on claim 73 which recites “cancer cells.” The dependent claim further limits the subject matter by reciting “human cancer cells.” Withdrawal of the rejection is respectfully requested.

Rejections under 35 U.S.C. §112, First Paragraph

New Matter

The Examiner has rejected claims 12, 71, 72, 74, and 76 under 35 U.S.C. §112, ¶1 as failing to comply with the written description requirement for containing new matter. The Examiner asserts that the specification does not provide support for culturing cells in the presence of the test substance for “at least three months.” Applicant respectfully disagrees.

However, in order to progress the prosecution of the instant application, Applicant has amended the claims as set forth above to recite that the cells are cultured for at least six weeks in claim 12, and new dependent claim 77 recites that the cells are cultured for at least thirteen weeks. This is the language that was suggested by the Examiner during the telephonic interview to have support in the specification as filed. Withdrawal of the rejection is respectfully requested.

Biological Deposit Required

The Examiner rejected claim 73 under 35 U.S.C. §112, ¶1 as failing to comply with the enablement requirement because the specification does not provide evidence

that the claimed biological materials are (a) known and readily available to the public; and (b) reproducible from the written description.

During the telephonic interview and in the Interview Summary, the Examiner stated that the requirement for a biological deposit was withdrawn.

SUMMARY

In view of the above amendment, applicant believes the pending application is in condition for allowance. Upon indication of allowable matter, Applicant request that the Examiner consider if rejoinder of any of the withdrawn claims would be possible. If rejoinder is not possible, Applicant will cancel the withdrawn claims to allow the remaining claims to proceed to allowance.

Applicant files herewith a Request for Continued Examination. Applicant believe that no further fee is due to consider the present amendment. Nevertheless, the Director is hereby authorized to charge or credit any deficiency in the fees filed, asserted to be filed or which should have been filed herewith (or with any paper hereafter filed in this application by this firm) to our Deposit Account No. 04-1105 referencing Docket No. 68138(46590).

Dated: December 19, 2008

Respectfully submitted,

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